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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

12 Coordinated Proceeding:

JCCP Case No. 4666

13 This Document Relates to:

**[PROPOSED] MODIFIED  
CONSENT JUDGMENT**

14 ANTHONY E. HELD, Ph.D., P.E.,  
15  
16 Plaintiff,

(Marin County Case No. CIV 093325)

17 v.

Health & Safety Code § 25249.6

18 RUBIES COSTUME COMPANY, INC.; and  
19 DOES 1-150, inclusive,  
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Defendants.

1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held, Ph.D., P.E. and Rubies Costume Company, Inc.**

3 This Modified Consent Judgment (“Modified Consent Judgment”) is entered into by and  
4 between Anthony E. Held, Ph.D., P.E. (hereinafter “Plaintiff” or “Dr. Held”) and Rubies Costume  
5 Company, Inc. (hereinafter “Rubies Costume” or “Settling Defendant”), collectively referred to as the  
6 “Parties.”

7 **1.2 Plaintiff**

8 Dr. Held is an individual residing in California who seeks to promote awareness of exposures  
9 to toxic chemicals and improve human health by reducing or eliminating hazardous substances  
10 contained in consumer products.

11 **1.3 Rubies Costume**

12 Settling Defendant employs ten or more persons and is a person in the course of doing  
13 business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California  
14 Health & Safety Code § 25249.6 *et seq.* (“Proposition 65”). Settling Defendant manufactures,  
15 distributes, and/or sells “Products” as defined in Section 1.5 below.

16 **1.4 General Allegations**

17 Dr. Held alleges that Settling Defendant has manufactured, distributed and/or sold in the State  
18 of California Products containing: di(2 ethylhexyl)phthalate (“DEHP”); di-n-butyl phthalate  
19 (“DBP”); arsenic (inorganic arsenic compounds and inorganic oxides); cadmium and/or cadmium  
20 compounds (“cadmium”); lead and/or lead compounds (“lead”); and/or formaldehyde (gas), each of  
21 which are listed pursuant to Proposition 65, as chemicals known to the State of California to cause  
22 cancer, birth defects, and/or other reproductive harm. DEHP, DBP, arsenic and/or arsenic  
23 compounds, cadmium, lead, and formaldehyde (gas) are referred to herein as the “Listed Chemicals.”

24 **1.5 Product Description**

25 The products that are covered by this Modified Consent Judgment are made of fabrics, plastic,  
26 metal, rubber and leather, and are defined as follows: (a) Halloween costumes; (b) Halloween  
27 costume accessories, specifically wigs, masks, gloves, footwear, belts, bags, hats, costume props,  
28 hosiery, weapons and jewelry intended to accessorize a costume (but excluding makeup); and (c)

1 Halloween indoor and outdoor home décor and games, specifically Halloween candy bowls, lawn,  
2 wall, door and table ornaments, decorative spiders/webs, ghosts, witches, goblins, skeletons, bats,  
3 cats and tombstones, each of which contains one or more of the Listed Chemicals. All such items  
4 shall be collectively referred to herein as the “Products.” For purposes of the listed chemical  
5 formaldehyde (gas) only, the term “Products” is limited to Products made of fabrics or textiles. The  
6 Products and Listed Chemicals applicable to Settling Defendant are limited to those Products sold by  
7 Settling Defendant in California.

8 Jewelry (as defined in Health & Safety Code §§ 25214.1 *et seq.*) intended to accessorize a  
9 costume allegedly containing lead and/or cadmium that would otherwise be a Product covered by this  
10 Modified Consent Judgment but which is the subject of a separate third-party 60-Day Notice issued  
11 to Settling Defendant pursuant to Proposition 65 on or before August 1, 2011, including, but not  
12 limited to, the Center for Environmental Health (“CEH”) notices to Settling Defendant dated  
13 November 20, 2008 alleging lead in jewelry, and December 9, 2010 alleging cadmium in jewelry, is  
14 specifically excluded from this Modified Consent Judgment and from the defined term Products,  
15 except for Settling Defendant’s agreement to reformulate lead and/or cadmium in jewelry as set forth  
16 in Section 2.1 below.

17 Should any such third-party notices to Settling Defendant alleging lead and/or cadmium in  
18 jewelry ultimately be found to be legally insufficient, or should a court of competent jurisdiction  
19 enter judgment against a third-party in any case brought based on such third-party notices, or  
20 otherwise dismiss a case brought upon such third-party notices, all of Settling Defendant’s jewelry  
21 that allegedly contains lead and/or cadmium intended to accessorize a costume shall thereafter be  
22 deemed to be included for all purposes within the defined term Products following the expiration of  
23 any supplemental 60-day notice covering alleged lead and/or cadmium in such jewelry issued by  
24 Plaintiff pursuant to the procedures set forth in Section 3.3 below provided that no public enforcer  
25 has commenced and is diligently prosecuting the allegations contained in the supplemental notice.

26 Jewelry intended to accessorize a costume containing Listed Chemicals hereunder other than  
27 lead and/or cadmium is a Product covered under this Consent Judgment to the extent of any Listed  
28 Chemicals other than lead and/or cadmium without resort to the supplemental notice procedure set

1 forth in Section 3.3.

## 2 **1.6 Procedural Background and Posture**

3 On January 26, 2009, Dr. Held served Rubies Costume and various public enforcement  
4 agencies with a document entitled “60-Day Notice of Violation” alleging that Rubies Costume was in  
5 violation of California Health & Safety Code § 25249.6 for failing to warn consumers and customers  
6 that children’s costumes with vinyl components containing DEHP exposed users in California to  
7 DEHP.

8 On June 30, 2009, Dr. Held served Rubies Costume and various public enforcement agencies  
9 with a document entitled “Supplemental 60-Day Notice of Violation” alleging that Rubies Costume  
10 was in violation of California Health & Safety Code § 25249.6 for failing to warn consumers and  
11 customers that children’s costumes with vinyl components, children’s costumes with inflatable vinyl  
12 components, children’s gloves with vinyl components, and vinyl balls exposed users in California to  
13 DEHP.

14 On July 2, 2009, Dr. Held, who was and is acting in the interest of the general public in  
15 California, filed a complaint in the Marin County Superior Court, naming Rubies Costume as a  
16 defendant and alleging violations of Health & Safety Code § 25249.6 based on the allegations  
17 contained in the January 26, 2009 Notice related to exposures to DEHP contained in the children’s  
18 costumes with vinyl components manufactured, distributed, and/or offered for sale in California by  
19 Rubies Costume (“Complaint”).

20 On September 22, 2009, Held and Rubies Costume entered into a [Proposed] Consent  
21 Judgment, which settled the allegations contained in the January 26, 2009 and June 30, 2009 Notices.  
22 The Court approved the Consent Judgment on December 10, 2009, and, pursuant to the terms of the  
23 Consent Judgment, amended the Complaint *nunc pro tunc* to include allegations with respect to the  
24 products covered by the Consent Judgment.

25 On October 29, 2010, Dr. Held served Rubies Costume and various public enforcement  
26 agencies with a document entitled “Second Supplemental 60-Day Notice of Violation” alleging that  
27 Rubies Costume was in violation of California Health & Safety Code § 25249.6 for failing to warn  
28 consumers and customers that Halloween costumes and Halloween accessories exposed users in

1 California to DEHP, lead, antimony, arsenic, cadmium, chromium, mercury, selenium, and  
2 formaldehyde.

3 On or about September 20, 2011, Dr. Held served Rubies Costume and various public  
4 enforcers with an “Amended Second Supplemental 60-Day Notice of Violation” that formally  
5 amended the Second Supplemental 60-Day Notice of Violation, and alleged that Rubies Costume was  
6 in violation of California Health & Safety Code § 25249.6 for failing to warn consumers that certain  
7 Products, as defined in Section 1.5, exposed users in California to the Listed Chemicals.

8 Provided that no public enforcer has commenced and is diligently prosecuting the allegations  
9 contained in the Amended Second Supplemental 60-Day Notice served on or about September 20,  
10 2011, the Complaint shall be deemed amended to include the allegations contained in the Amended  
11 Second Supplemental Notice.

#### 12 **1.7 No Admission**

13 Nothing in this Modified Consent Judgment is or shall be construed as an admission by  
14 Settling Defendant of any fact, conclusion of law, issue of law or violation of law, nor shall  
15 compliance with the Modified Consent Judgment constitute or be construed as an admission by  
16 Settling Defendant of any fact, conclusion of law, issue of law, or violation of law. Nothing in this  
17 Modified Consent Judgment shall prejudice, waive or impair any right, remedy, argument or defense  
18 Settling Defendant may have in any other legal proceeding. This Modified Consent Judgment is the  
19 product of negotiation and compromise and is accepted by the parties for purposes of settling,  
20 compromising and resolving issues disputed in this Action.

#### 21 **1.8 Consent to Jurisdiction**

22 For purposes of this Modified Consent Judgment only, Settling Defendant stipulates that this  
23 Court has jurisdiction over it as to the allegations contained in the Complaint, that venue is proper in  
24 the County of Alameda, and that the Court has jurisdiction to enter and enforce the provisions of this  
25 Modified Consent Judgment. Also for purposes of this Modified Consent Judgment only, Settling  
26 Defendant waives the statute of limitations on Plaintiff’s claims in the Notices, the captioned Action,  
27 and with respect to any claims incorporated pursuant to any supplemental notices issued under  
28 Section 3.3.

1 **1.9 Effective Date**

2 For purposes of this Modified Consent Judgment, the term “Effective Date” shall mean the  
 3 date 30 days after the date on which this Modified Consent Judgment is entered by the Court as to  
 4 Settling Defendant.

5 **2. INJUNCTIVE RELIEF: REFORMULATION**

6 **2.1 Reformulation Commitment**

7 After the Effective Date, Settling Defendant shall only ship Products for sale in California that  
 8 are “reformulated” as set forth below. For purposes of this Modified Consent Judgment,  
 9 “reformulated” shall mean that every accessible material and component that can be mouthed,  
 10 handled or touched (“Accessible Component”) shall yield, pursuant to the test methodology specified  
 11 below, a result that is less than or equal to the following content limits, by weight, for the chemicals  
 12 identified in Table 2.1:

13 Table 2.1

Chemical	Limit
Arsenic	25 ppm*
Cadmium	75 ppm* (except see below for components of Products intended for children under twelve that can be placed in a child’s mouth)
BBP	1,000 ppm**
DBP	1,000 ppm**
DEHP	1,000 ppm**
Formaldehyde	<ul style="list-style-type: none"> <li>• For Products intended for children under three (3), 20 ppm;</li> <li>• For Products intended for children three (3) and up, and/or for adults, 75 ppm</li> </ul>
Lead	<ul style="list-style-type: none"> <li>• 90 ppm for all paint and surface coatings for all adult or children’s products (16 CFR § 1303 <i>et seq.</i>)</li> <li>• 100 ppm for any materials that are neither paint nor surface coatings in children’s products (as such term is defined by the Consumer Product Safety Improvement Act of 2008)</li> <li>• 300 ppm for any materials that are neither paint nor surface coatings in all other non-children’s products</li> </ul>

1 In order to determine whether the Products contain less than the reformulated standard above,  
2 Settling Defendant may only utilize testing methodologies and definitions allowed by the State of  
3 California Environmental Protection Agency or by the U.S. Consumer Product Safety Commission  
4 pursuant to the Consumer Product Safety Improvement Act of 2008 (“CPSIA”), including Section  
5 106 of the CPSIA for those chemical limits noted with a “\*” in Table 2.1 above, and Section 108 for  
6 the chemical limits noted with a “\*\*” in Table 2.1 above. For components of Products designed for  
7 Children under twelve (12) that can be placed in a child’s mouth, rather than meeting the standard set  
8 forth for cadmium in Table 2.1 above, such components may only contain equal to or less than 300  
9 ppm total cadmium and must also contain no intentionally added cadmium.

10 For any Products that are or contain jewelry, the jewelry or jewelry component shall also meet  
11 the lead limits set forth in Health & Safety Code § 25214.1 *et seq.* for jewelry as defined therein  
12 (California’s lead in jewelry law), and the lead limits set forth in the Consent Judgment to which the  
13 California Attorney General is a party that was entered by the Court in *People v. Burlington Coat*  
14 *Factory, et al.*, Alameda County Superior Court Case No. RG04162075 (a case that is a part of JCCP  
15 4666) for jewelry as defined therein (and any amendments thereto). Any Products that are or contain  
16 jewelry (whether intended for adults or children) shall also meet the children’s cadmium standards set  
17 forth in Health & Safety Code § 25249.1 *et seq.* pursuant to the test protocols set forth therein.

18 Settling Defendant expressly agrees to be bound by the reformulation requirements of this  
19 Modified Consent Judgment for any and all Products identified on Exhibit A hereto as of the  
20 Effective Date, including for lead and/or cadmium in any and all jewelry that is subject to exclusion  
21 from the definition of Products due to a third-party 60-day notice as set forth in Section 1.5 of this  
22 Modified Consent Judgment.

## 23 **2.2 Further Modification of Reformulation Standards**

24 If the State of California has adopted (or will adopt after the Effective Date) a more protective  
25 standard than the content levels now listed in Section 2.1 above – either by statute, regulation, or  
26 judgment entered into by the California Attorney General on behalf of the People of the State of  
27 California – then such standard shall automatically supersede the levels listed in Section 2.1.

28 In addition, Plaintiff may, after giving 30 days’ notice to Rubies Costume, move the Court to

1 further modify the reformulation standards in Section 2.1 if facts exist that demonstrate that the  
2 current levels set are insufficient to reduce reasonably anticipated exposures to the Listed Chemicals  
3 below that hazard level which would require a warning obligation under the Safe Drinking Water and  
4 Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.6. If Plaintiff seeks to  
5 further modify this Modified Consent Judgment to lower the permissible content levels of one or  
6 more Listed Chemicals, Rubies Costume shall reimburse Dr. Held and his counsel for a portion of  
7 their reasonable attorneys' fees and costs, up to an amount of \$5,000, to be paid by Rubies Costume  
8 within fourteen days of approval of such modification. The foregoing does not in any way limit  
9 Rubies Costume's rights to oppose any such modification or the Court's discretion to deny a motion  
10 by Dr. Held to modify the Modified Consent Judgment, but the burden of opposing such modification  
11 shall remain with Rubies Costume consistent with Health & Safety Code § 25249.10(c). Should such  
12 a modification be denied, Rubies Costume shall not be required to pay any of Plaintiff's attorneys'  
13 fees and costs associated with seeking such modification.

### 14 **3. RUBIES COSTUME'S MONETARY PAYMENTS**

#### 15 **3.1 Payments by Rubies Costume Pursuant to Health & Safety Code § 25249.7(b).**

16 In settlement of all claims related to the Products and Listed Chemicals referred to in the  
17 Complaint and this Modified Consent Judgment, pursuant to Health & Safety Code § 25249.7(b),  
18 Rubies Costume, which has already paid \$4,000 in civil penalties, shall pay an additional \$6,000 in  
19 civil penalties. Civil penalties are to be apportioned in accordance with California Health & Safety  
20 Code § 25249.12(c) & (d), with 75% of these funds remitted to the State of California's Office of  
21 Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty  
22 remitted to Dr. Held.

#### 23 **3.2 Rubies Costume's Payment of Attorney Fees and Costs.**

24 Rubies Costume, which has already reimbursed Dr. Held and his counsel a total of \$24,000  
25 for fees and costs, agrees to pay an additional amount of \$34,000 in fees and costs incurred as a result  
26 of Plaintiff investigating, bringing this matter to Rubies Costume's attention, and litigating and  
27 negotiating a settlement in the public interest.



1           **3.3**     Settling Defendant, whose jewelry products allegedly contain lead and/or cadmium  
2 that are initially excluded from the definition of Products pursuant to Section 1.5, may later add those  
3 jewelry products allegedly containing lead and/or cadmium to the Products covered by this Modified  
4 Consent Judgment consistent with the disposition of any third-party notices or enforcement actions  
5 based thereon as set forth in Section 1.5, and Plaintiff agrees to issue a supplemental 60-day notice in  
6 compliance with all statutory and regulatory requirements to cover lead and/or cadmium in such  
7 jewelry products hereunder consistent with Section 1.5. Settling Defendant shall cooperate with  
8 Plaintiff in providing additional information or representations necessary to enable Plaintiff to issue  
9 any such supplemental 60-Day Notice(s) and Certificate(s) of Merit, and in preparing the papers  
10 necessary file an amendment to this consent judgment to incorporate lead and/or cadmium in jewelry  
11 as included within the defined term “Product” hereunder subject to a full release for lead and/or  
12 cadmium under Sections 4.1.1-4.1.5 of this Consent Judgment. Plaintiff shall submit an application  
13 to the Court for entry of such modification of this Consent Judgment.

14           **3.4     Payment Instructions.** All settlement payments required by this Consent Judgment  
15 shall be paid as follows:

16                   **3.4.1     Civil Penalties:** Civil Penalties paid under this Modified Consent Judgment  
17 shall be apportioned in accordance with California Health & Safety Code § 25249.12(c) & (d), with  
18 75% of these funds remitted to OEHHA and the remaining 25% of the penalty remitted to Plaintiff.  
19 Each Settling Defendant shall issue two separate checks for the penalty payment: (a) one check made  
20 payable to “The Chanler Group in Trust For OEHHA” in an amount representing 75% of the total  
21 penalty; and (b) one check to “The Chanler Group in Trust For Anthony Held” in an amount  
22 representing the remaining 25% of the total penalty. Two separate 1099s shall be issued for the  
23 above payments, including those payments already made by Rubies Costume: (a) OEHHA, P.O. Box  
24 4010, Sacramento, CA, 95814 (EIN: 68-0284486); and (b) Anthony Held. The information required  
25 to issue the 1099s for Plaintiff shall be provided five calendar days before the payment is due.

26                   **3.4.2     Attorneys’ Fees:** Attorneys’ fees shall be paid by means of a check made  
27 payable to “The Chanler Group.”  
28

1                   **3.4.3 Timing of Rubies Costume’s Payments:** All funds payable by Rubies  
2 Costume under Sections 3.1 and 3.2 were paid on September 20, 2011.

3                   **3.4.4 Payment Delivery:** All settlement payments required by this Consent  
4 Judgment shall be sent to the following address:

5                   The Chanler Group  
6                   Attn: Proposition 65 Controller  
7                   2560 Ninth Street  
8                   Parker Plaza, Suite 214  
9                   Berkeley, CA 94710

8 **4. RELEASE OF ALL CLAIMS**

9 **4.1 Dr. Held’s Release of Rubies Costume**

10                   **4.1.1** This Modified Consent Judgment is a full, final, and binding resolution  
11 between Plaintiff, on behalf of himself and in the public interest, and Settling Defendant, its parents,  
12 subsidiaries, and affiliated entities that are under common ownership, directors, officers, employees,  
13 and attorneys (“Defendant Releasees”), and each entity to whom they directly or indirectly distribute  
14 or sell Products, including but not limited to distributors, wholesalers, customers, retailers,  
15 franchisees, cooperative members, licensors, and licensees (“Downstream Defendant Releasees”) of  
16 any violation of Proposition 65 that was or could have been asserted in the Complaint against Settling  
17 Defendant, Defendant Releasees, and Downstream Defendant Releasees, based on failure to warn  
18 about alleged exposure to Listed Chemicals contained in the Products that were sold by Settling  
19 Defendant prior to the Effective Date. Rubies Costume’s affiliates, subsidiaries, and related entities  
20 who are not parties to this Consent Judgment are excluded from the definition of Defendant  
21 Releasees and Downstream Defendant Releasees and shall not be covered or released by any portion  
22 of this Consent Judgment.

23                   **4.1.2** In further consideration of the promises and agreements herein contained, the  
24 injunctive relief commitments set forth in Section 2, and for the payments to be made pursuant to  
25 Section 3, Plaintiff on behalf of himself, his past and current agents, representatives, attorneys,  
26 successors, and/or assignees, and in the interest of the general public, hereby waives all rights to  
27 institute or participate in, directly or indirectly, any form of legal action, and releases all claims,  
28 including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities,

1 demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but not limited  
2 to, investigation fees, expert fees, and attorneys' fees) of any nature whatsoever (collectively  
3 "claims"), against Settling Defendant, each of its Defendant Releasees, and each of its Downstream  
4 Defendant Releasees. This release is limited to those claims that arise under Proposition 65 with  
5 respect to Listed Chemicals in the Products manufactured, distributed or sold by the Settling  
6 Defendant, as such claims relate to the alleged failure to warn under Health & Safety Code § 25249.6  
7 as to the Listed Chemicals in such Products.

8 **4.1.3** Plaintiff also, in his individual capacity only and *not* in his representative  
9 capacity, provides a release herein on behalf of himself, his past and current agents, representatives,  
10 attorneys, successors, and/or assignees, which shall be effective as a full and final accord and  
11 satisfaction, and as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees,  
12 damages, losses, claims, liabilities and demands of any nature, character or kind, known or unknown,  
13 suspected or unsuspected, arising out of alleged or actual exposure to the Listed Chemicals in the  
14 Products manufactured, distributed or sold by Settling Defendant, each of its Defendant Releasees,  
15 and, to the extent sold by any of them, each of its Downstream Defendant Releasees, whether or not  
16 such Products are or contain jewelry allegedly containing lead and/or cadmium that is excluded from  
17 the definition of Products as defined in Section 1.5 above. In exchange for this release, Settling  
18 Defendant expressly agrees to be bound by the reformulation requirements of this Modified Consent  
19 Judgment for Products that are or contain jewelry allegedly containing lead and/or cadmium as of the  
20 Effective Date, whether or not any such jewelry is otherwise subject to exclusion from the definition  
21 of Products due to a third-party 60-day notice as set forth in Section 1.5 of this Consent Judgment.

22 **4.1.4** Compliance with the terms of this Modified Consent Judgment by Settling  
23 Defendant constitutes compliance with Proposition 65 with respect to Listed Chemicals in Settling  
24 Defendant's Products. Only Parties to this Modified Consent Judgment may enforce its terms.

25 **4.1.5** Nothing in this Section 4 affects Plaintiff's right to commence or prosecute an  
26 action under Proposition 65 against any person other than Settling Defendant, Defendant Releasees,  
27 or Downstream Defendant Releasees.

1           **4.1.6** Nothing in this Section 4 affects Plaintiff's right to commence or prosecute  
2 an action under Proposition 65 against a Downstream Defendant Releasee that does not involve  
3 Settling Defendant's Products.

4           **4.2     Settling Defendant's Release of Dr. Held**

5           Settling Defendant waives any and all claims against Dr. Held, his attorneys and other  
6 representatives, for any and all actions taken or statements made (or those that could have been taken  
7 or made) by Dr. Held and his attorneys and other representatives, whether in the course of  
8 investigating claims or otherwise seeking enforcement of Proposition 65 against Settling Defendant  
9 in this matter, and/or with respect to the Products.

10       **5.     COURT APPROVAL**

11       **5.1**     The Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7,  
12 a noticed motion is required to obtain judicial approval of this Modified Consent Judgment, and shall  
13 file a joint motion for approval. Rubies Costume shall prepare and provide to Held the initial draft  
14 joint motion and all required approval documents on or before October 1, 2011. If this Modified  
15 Consent Judgment is not approved by the Court within one year, the Parties shall meet and confer to  
16 determine whether to modify the terms of the Modified Consent Judgment and to resubmit it for  
17 approval. Rubies Costume and its counsel agree to support Held's effort to obtain final entry of this  
18 Modified Consent Judgment by the trial court and to undertake any actions reasonably necessary to  
19 implement and/or modify this Modified Consent Judgment in order to further the mutual intention of  
20 the Parties in entering into this Modified Consent Judgment.

21       **5.2**     If this Modified Consent Judgment is not entered by the Court as to Rubies Costume  
22 within one year, it shall be of no force or effect as to Rubies Costume and shall never be introduced  
23 into evidence or otherwise used in any proceeding for any purpose other than to determine the rights  
24 or obligations of a Party as a result of the fact that the Modified Consent Judgment was not approved.  
25 In the event this Modified Consent Judgment is not approved, Plaintiff shall refund the monies paid  
26 by Rubies Costume within 15 days of the written request of Rubies Costume, provided that Rubies  
27 Costume first complies with the obligations set forth in Section 5.1 above.

1     **6. GOVERNING LAW**

2             The terms of this Modified Consent Judgment shall be governed by the laws of the State of  
3 California and apply within the State of California. In the event that Proposition 65 is repealed,  
4 preempted or is otherwise rendered inapplicable by reason of law generally, or as to the Products,  
5 Settling Defendant may provide written notice to Dr. Held of any asserted change in the law, and  
6 shall have no further obligations pursuant to this Modified Consent Judgment with respect to, and to  
7 the extent that, the Products are so affected. Nothing in this Modified Consent Judgment shall be  
8 interpreted to relieve Settling Defendant from any obligation to comply with any pertinent state or  
9 federal toxics control laws.

10    **7. COUNTERPARTS; FACSIMILE SIGNATURES**

11             This Modified Consent Judgment may be executed in counterparts and by facsimile or  
12 portable document format (.pdf), each of which shall be deemed an original, and all of which, when  
13 taken together, shall constitute one and the same document.

14    **8. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

15             Dr. Held agrees to comply with reporting form requirements referenced in California Health  
16 & Safety Code § 25249.7(f) to the extent that they apply to this modification.

17    **9. NOTICES**

18             When any Party is entitled to receive any notice under this Modified Consent Judgment, the  
19 notice shall be sent by certified mail or electronic mail to the following:

20             For Rubies Costume:

21             J. Robert Maxwell  
22             Rogers Joseph O'Donnell  
23             311 California Street, 10th floor  
24             San Francisco, CA 94104  
25             E-mail: jrm@rjo.com

26             For Dr. Held:

27             Proposition 65 Coordinator  
28             The Chanler Group  
29             2560 Ninth Street  
30             Parker Plaza, Suite 214  
31             Berkeley, CA 94710-2565

1           The Parties may modify the person and address to whom the notice is to be sent by sending  
2 the other Party notice by certified mail and/or other verifiable form of written communication.

3       **10.    MODIFICATION**

4           Except as set forth in Section 2.2 relating to the reformulation standards, this Modified  
5 Consent Judgment may be modified or amended only: (1) by written agreement of the Parties and  
6 upon entry of a Stipulation and Order by the court thereon; or (2) upon a successful motion or  
7 application of any party which motion or application shall not be unreasonably opposed unless a  
8 material term affecting the opposing party is at issue.

9       **11.    ATTORNEYS' FEES**

10          Except as otherwise provided in this Modified Consent Judgment, each Party shall bear its  
11 own attorneys' fees and costs.

12       **12.    OTHER TERMS**

13           **12.1**    The terms of this Modified Consent Judgment shall be governed by the laws of the  
14 State of California.

15           **12.2**    This Modified Consent Judgment shall apply to and be binding upon Plaintiff and  
16 Settling Defendant, and their respective divisions, subdivisions, and subsidiaries, and the successors  
17 or assigns of any of them.

18           **12.3**    This Modified Consent Judgment contains the sole and entire agreement and  
19 understanding of the Parties with respect to the entire subject matter set forth in this Modified  
20 Consent Judgment, and any and all prior discussions, negotiations, commitments, or understandings  
21 related thereto, if any, are deemed merged. No representations, oral or otherwise, express or  
22 implied, other than those specifically referred to in this Modified Consent Judgment have been  
23 made by any Party with respect to the subject matter of this Modified Consent Judgment. No other  
24 agreements not specifically contained or referenced in this Modified Consent Judgment, oral or  
25 otherwise, shall be deemed to exist or to bind any of the Parties with respect to the subject matter of  
26 this Modified Consent Judgment. No supplementation, modification, waiver, or termination of this  
27 Modified Consent Judgment shall be binding unless executed in writing by the Party to be bound.  
28 No waiver of any of the provisions of this Modified Consent Judgment shall be deemed or shall

1 constitute a waiver of any of the other provisions whether or not similar, nor shall such waiver  
2 constitute a continuing waiver.

3 **12.4** Nothing in this Modified Consent Judgment shall release, or in any way affect any  
4 rights that Settling Defendant might have against any other party.

5 **12.5** This Modified Consent Judgment may be executed in counterparts and by means of  
6 facsimile or portable document format (.pdf), which taken together shall be deemed to constitute  
7 one document.

8 **12.6** The Parties, including their counsel, have participated in the preparation of this  
9 Modified Consent Judgment and this Modified Consent Judgment is the result of the joint efforts of  
10 the Parties. This Modified Consent Judgment was subject to revision and modification by the  
11 Parties and has been accepted and approved as to its final form by all Parties and their counsel.  
12 Accordingly, any uncertainty or ambiguity existing in this Modified Consent Judgment shall not be  
13 interpreted against any Party as a result of the manner of the preparation of this Modified Consent  
14 Judgment. Each Party to this Modified Consent Judgment agrees that any statute or rule of  
15 construction providing that ambiguities are to be resolved against the drafting Party should not be  
16 employed in the interpretation of this Modified Consent Judgment and, in this regard, the Parties  
17 hereby waive California Civil Code Section 1654.

18 **13. AUTHORITY TO EXECUTE**

19 Each signatory to this Modified Consent Judgment certifies that he or she is fully authorized  
20 by the Party he or she represents to stipulate to this Modified Consent Judgment and to enter into  
21 and execute the Modified Consent Judgment on behalf of the Party represented and to legally bind  
22 that Party.  
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1 **AGREED TO:**

**APPROVED**

*By Anthony Held at 11:30 am, Nov 03, 2011*

**AGREED TO:**

2 Date: \_\_\_\_\_

Date: Nov 1, 2011

3  
4 By: Anthony E Held

5 ANTHONY E. HELD, Ph.D., P.E.

By: Marc P Beige

Marc Beige, President  
RUBIES COSTUME COMPANY, INC.

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9 **IT IS SO ORDERED.**

10  
11 Date: \_\_\_\_\_

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JUDGE OF THE SUPERIOR COURT

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